frontier

Michael J. Shortley, III
Senior Attorney and Director
Regulatory Services

180 South Clinton Avenue
Rochester, NY 14646
716-777-1028
716-546-7823 fax
716-777-6105

mshortle@frontiercorp.com

September 23, 1997

BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 97-149

Dear Mr. Caton:

Enclosed for filing please find an original plus six (6) paper copies of the Reply to Oppositions filed by the Frontier Telephone Companies in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Competitive Pricing Division (2)

International Transcription Service

No. of Copies rec'd 0+6
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1997 Annual Access Tariff Filings	)	**CC Docket No. 97-149**
	)	

REPLY TO OPPOSITIONS

Rochester Telephone Corp. and the Tier 2 affiliates that concur in its Tariff F.C.C. No. 1 and Frontier Communications of Minnesota, Inc. and Frontier Communications of Iowa, Inc. (collectively, the "Frontier Telephone Companies") submit this reply to the oppositions filed by AT&T Corp. ("AT&T") and MCI Telecommunications Corp. ("MCI") to their direct case in this proceeding. The gravamen of both oppositions is that certain price cap exchange carriers: (a) underforecast their base factor portion ("BFP") revenue requirements, thereby overstating carrier common line ("CCL") charges; and (b) failed to utilize an R-value adjustment in computing the exogenous cost adjustment to account for the expiration of the equal access cost amortization.

The first claim is simply inapplicable to the Frontier Telephone Companies. Neither AT&T nor MCI challenge the validity of the Frontier Telephone Companies' forecasts. As such, there is no basis for the Bureau to require the Frontier Telephone Companies to recalculate their common line charges on the basis of forecasting errors.

The proposed R-value adjustment is equally without merit.[1] The merits of the proposed adjustment are absolutely irrelevant to this tariff investigation. Requiring such an adjustment now would constitute retroactive ratemaking, which is beyond the Commission's authority.[2] MCI utterly fails to come to grips with this analysis. Rather, MCI claims that there was no ambiguity in the *Access Charge Reform Order* which required the price cap carriers exchange carriers to take this exogenous cost adjustment.[3] By inference, MCI appears to argue that the *Access Charge Reform Order* actually *required* an R-value adjustment. This argument is wrong on its face. When, in the past, the Commission required (*before the fact*) the utilization of an R-value adjustment, it said so.[4] In the *Access Charge Reform Order* and the *Tariff Revenue Plan Order*,[5] the Commission did not require this adjustment. Thus, MCI is correct that there is no

---

1 This claim does not apply to Frontier Communications of Minnesota, Inc. and Frontier Communications of Iowa, Inc. as those companies expensed, rather than amortized, their equal access costs. *See 1997 Annual Access Tariff Filings*, CC Dkt. 97-149, Order Designating Issues for Investigation, Memorandum Opinion and Order on Reconsideration, DA 97-1609, ¶¶ 77, 90 (Com. Car. Bur. July 28, 1997).

2 Frontier Direct Case at 9

3 MCI Opposition at 13.

4 *See Commission Requirements for Cost Support Material To Be Filed with 1993 Annual Access Tariffs*, 8 FCC Rcd. 1936, 1939 n.30 (Com. Car. Bur. 1993); *Commission Requirements for Cost Support Material To Be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material*, 9 FCC Rcd. 1060, 1063 n.29 (Com. Car. Bur. 1994).

5 *See Access Charge Reform*, CC Dkt. 96-262, First Report and Order, FCC 97-158 (May 16, 1997); *Commission Requirements for Cost Support Material To Be Filed in Support of 1997 Annual Access Tariff Filings*, DA 97-593, Tariff Review Plan (Com. Car. Bur. March 21, 1997), *revised*, DA 97-1081 (Com. Car. Bur. May 22, 1997).

ambiguity in the relevant orders. That, however, means that the R-value adjustment was *not* required.

AT&T argues that the Commission recognized that the Bureau could require R-value adjustments without the Commission explicitly so stating that they were required.[6] To quote AT&T, "[t]his is nonsense."[7] In its decision rejecting claims that an R-value adjustment should have been made to account for the removal of other post-employment benefits costs, the Bureau only recognized that the Commission could require this type of adjustment in the future.[8] The Frontier Telephone Companies have no quarrel with that analysis. However, the fact remains that the Commission *did not* "*specifically require*"[9] application of an R-value adjustment, a point AT&T does not dispute.

Whether the Bureau, on delegated authority, could require application of an R-value adjustment without express Commission approval[10] is highly debatable but completely irrelevant. *The Bureau did not do so either*, a point AT&T does not contest. It is now simply too late for either the Commission or the Bureau to require application of an R-value adjustment. To do so in the context of a *post facto* tariff investigation would constitute a rule change with retroactive

---

6 AT&T Opposition at 22-23.

7 *Id.* at 22.

8 *1995 Annual Access Tariff Filings*, DA 95-1631, Memorandum Opinion and Order, 11 FCC Rcd. 5461, 5471-72, ¶ 15 (Com. Car. Bur. 1995).

9 *Id.* (emphasis added).

10 *See* AT&T Opposition at 22.

effect (another point AT&T does not contest). The Commission possesses no such authority.[11]

For purposes of this reply, the Frontier Telephone Companies will leave to others the debate over the merits of the proposed adjustment.[12] In the context of this tariff investigation, the Commission does not possess the authority to order it.

For the foregoing reasons, the Commission should terminate this investigation with respect to the Frontier Telephone Companies' 1997 Annual Access Tariff Filings.

Respectfully submitted,

Michael J. Shortley, III

Attorney for the
Frontier Telephone Companies

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

September 23, 1997

---

11 See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09 (1988); *Landsgraf v. USI Film Products*, 114 S. Ct. 1483, 1487 (1994).

12 The proposed adjustment is meritless in any event. See Frontier Direct Case at 7-8.

Certificate of Service

I hereby certify that, on this 23rd day of September, 1997, copies of the foregoing Reply to Oppositions were served by first-class mail, postage prepaid, upon:

Judy Sello
AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Alan Buzacott
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Michael J. Shortley, III